

**BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA  
DOCKET NO. 2017-\_\_\_\_-C**

IN RE:	)	
	)	
Pay Tel Communications, Inc.,	)	
Complainant,	)	<b>COMPLAINT AND</b>
	)	<b>PETITION FOR</b>
Vs.	)	<b>DECLARATORY ORDER</b>
	)	
Lattice Incorporated,	)	
Respondent.	)	
	)	

Pay Tel Communications, Inc. (“Pay Tel”), complaining of Lattice Incorporated (“Lattice”), and pursuant to S.C. Code Ann. § 58-9-1080, 10 S.C. Code Ann. Reg. 103-824, and 10 S.C. Code Ann. Reg. 103-825, seeks a declaratory order from the Public Service Commission of South Carolina (“Commission”) that 1) Lattice is a telephone utility as defined in S.C. Code Ann. § 58-9-10, and is providing inmate telephone services in South Carolina; 2) Lattice is required to obtain a certificate of public convenience and necessity from the Commission and pursuant to S.C. Code Ann. § 58-9-280(A) prior to offering or providing inmate telephone service in South Carolina, but has obtained no such certificate; 3) Lattice is required to file a tariff schedule that is approved by the Commission before charging any rate associated with inmate telephone services, pursuant to S.C. Code Ann. § 58-9-230(A) and S.C. Code Ann. Regs. 103-603(B), but has filed no such schedule with the Commission or obtained any necessary approval; 4) Lattice is a “public utility” subject to assessment pursuant to S.C. Code Ann. § 58-3-100; and 5) Lattice is a “telecommunications company” providing “telecommunications services in South Carolina” and therefore required to contribute to the South Carolina Universal Service Fund (“USF”) pursuant to S.C. Code Ann. § 58-9-280(E)(2).

## INTRODUCTION

1. Pay Tel is a corporation incorporated under the laws of the State of North Carolina. Pay Tel is authorized to transact business in the State of South Carolina.
2. Pay Tel is a “telephone utility” as defined by S.C. Code Ann. § 58-9-10 and currently provides inmate telephone services to confinement facilities in South Carolina pursuant to the provisions of Chapter 9 of Title 58 of the South Carolina Code of Laws.
3. Pay Tel was certified to provide inmate telephone service in South Carolina on March 4, 1991 by Commission Order 91-22 in Docket No. 1990-305-C. Pay Tel has continuously served South Carolina confinement facilities since that date.
4. Pay Tel charges rates approved by this Commission that are set out in a tariff that has been filed with the Commission and with the South Carolina Office of Regulatory Staff (ORS), contributes to the South Carolina Universal Service Fund (USF) as required by the Commission and in the amounts determined by the ORS, and pays annual gross receipts assessments based upon its gross income from operation in South Carolina.
5. Lattice is, upon information and belief, a corporation incorporated under the laws of the State of Delaware, and has been authorized to transact business in the State of South Carolina.
6. Lattice’ registered agent and address for service of process on file with the South Carolina Secretary of State is:

National Registered Agents, Inc.  
2 Office Park Court, Suite 103  
Columbia, SC 29223

**APPLICABLE LAW**

7. S.C. Code Ann. § 58-9-10(6) defines “telephone utility” as  
  
Persons and corporations, their lessees, assignees, trustees, receivers or other successors in interest owning or operating in this State equipment or facilities for the transmission of intelligence by telephone for hire, including all things incident thereto and related to the operation of telephones . . . .
8. S.C. Code Ann. § 58-9-280(a) provides, in relevant part:  
  
No telephone utility shall begin the construction or operation of any telephone utility plant or system, or of any extension thereof . . . without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction or operation.
9. S.C. Code Ann. § 58-9-230(A) provides:  
  
No telephone utility may directly or indirectly by any device whatsoever or in any way, charge, demand, collect, or receive from any person or corporation a greater or less compensation for any service rendered or supplied, or to be rendered or supplied, by the telephone utility, than that prescribed in the schedules of the telephone utility applicable thereto then filed in the manner provided in Articles 1 through 13 of this chapter, nor may any person or corporation receive or accept any service from a telephone utility for a compensation greater or less than that prescribed in the schedules.
10. S.C. Code Ann. Regs. 103-603(B) provides:  
  
All rates, tolls, or charges involving rates under the jurisdiction of the commission proposed to be put into effect by any telephone utility shall first be approved by the commission before they shall become effective, unless they are exempt from such approval by statute, order of the commission, or other provisions of law.
11. S.C. Code Ann. § 58-3-100 provides in relevant part:  
  
the Department of Revenue must assess each public utility . . . its proportion of the expenses in proportion to its gross income from its operation in this State . . . .
12. S.C. Code Ann. § 58-9-210 provides:  
  
Every rate made, demanded or received by any telephone utility or by any two or more telephone utilities jointly shall be just and reasonable.
13. S.C. Code Ann. § 58-9-280(E)(2) provides:

The commission shall require all telecommunications companies providing telecommunications services in South Carolina to contribute to the USF as determined by the commission.

14. S.C. Code Ann. § 58-9-390 provides:

Each telephone utility shall obey and comply with each and every requirement of every order, decision, direction, rule, or regulation made or prescribed by the commission and every direction, rule, or regulation made or prescribed by the Office of Regulatory Staff in the performance of its duties under Articles 1 through 13 of this chapter, or in relation to any other matter in any way relating to or affecting the business of such telephone utility and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule, or regulation by all of its officers, agents, and employees.

### **FACTS**

15. Lattice does not possess any authority granted by the Commission. Lattice has not been issued a certificate of public convenience and necessity to provide intrastate interexchange or local exchange service pursuant to S.C. Code Ann. § 58-9-280.

16. In 2015, Lattice filed an Application with the Commission seeking a “Certificate of Public Convenience and Necessity to Provide Intrastate Resold Institutional Telecommunications Services and for Alternative Regulation Within the State of South Carolina.” *See* Docket No. 2015-413-C.

17. As set out in its Application, Lattice proposed “to provide automated operator assisted collect and prepaid calling services to inmates and other incarcerated persons in confinement facilities throughout the State of South Carolina.”

18. However, Lattice withdrew its Application, and the Commission approved the withdrawal on February 24, 2016 by Order No. 2016-125.

19. Lattice is currently providing intrastate telecommunications service in South Carolina, despite lacking any authority from this Commission to do so.

20. In particular, Lattice is providing inmate telephone services to the Union County Detention Center. As shown by the attached **Exhibit A**, Lattice has been awarded the contract to provide the “Inmate Phone System” for Union County, South Carolina.

21. Moreover, Lattice is providing inmate telephone services to the Colleton County Detention Center.

22. By providing inmate telephone services without a certificate of public convenience and necessity, Lattice is in violation of S.C. Code Ann. § 58-9-280(A).

23. In addition, Lattice has filed no tariff schedule with the Commission, and the Commission has approved no rates, terms, and conditions for any inmate telephone services that Lattice might provide.

24. By providing inmate telephone services without a tariff approved by the Commission, Lattice is in violation of S.C. Code Ann. § 58-9-230 and S.C. Code Ann. Regs. 103-603(B).

25. Upon information and belief, Lattice is not reporting its South Carolina-based revenues earned from the provision of inmate telephone service to ORS or to the Commission. To the extent that Lattice is not reporting those revenues, and paying gross receipts and USF assessments, Lattice is in violation of S.C. Code Ann. § 58-3-100 and S.C. Code Ann. § 58-9-280(E)(2).

26. Additionally, Lattice is not meeting the requirements of S.C. Code Ann. § 58-9-390, as Lattice is not compliance with South Carolina law applicable to its operation as a “telephone utility.”

**PETITION FOR DECLARATORY ORDER**

27. Based upon the facts set out above, as well as those that may be presented over the course of this proceeding, Pay Tel requests that the Commission issue an order declaring:

- a. Lattice is a “telephone utility” pursuant to S.C. Code Ann. § 58-9-10, and is subject to the jurisdiction of the Commission;
- b. Lattice is providing intrastate telephone services in South Carolina;
- c. S.C. Code Ann. § 58-9-280(A) requires Lattice to obtain a certificate of public convenience and necessity prior to providing intrastate telephone services in South Carolina;
- d. S.C. Code Ann. § 58-9-230 requires Lattice to file a schedule of its rates and charges with the Commission, and to have those rates and charges approved by the Commission, prior to providing intrastate telephone services in South Carolina for compensation;
- e. The Commission has approved no “rates, tolls or charges involving rates” for Lattice in connection with any inmate telephone services provided in South Carolina, pursuant to S.C. Code Ann. Regs. 103-603(B);
- f. Those rates charged by Lattice have not been found by the Commission to be “just and reasonable” pursuant to S.C. Code Ann. § 58-9-210.
- g. Lattice is a “public utility” subject to assessment pursuant to S.C. Code Ann. § 58-3-100;
- h. Lattice is a “telecommunications company” providing “telecommunication services” in South Carolina, and is therefore required, pursuant to S.C. Code Ann. § 58-9-280(E)(2), to contribute to the USF.

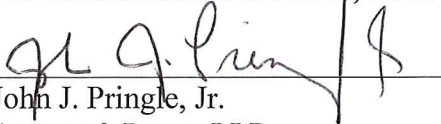
**CONCLUSION**

Pay Tel requests that the Commission issue a declaratory order consistent with the above, and grant such other relief as is just and proper.

Respectfully submitted,

**PAY TEL COMMUNICATIONS, INC.**

By:



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Dated: November 30, 2017  
Columbia, South Carolina

## RFP for Inmate Phone System for Union County

Committee Members of Evaluation:

Frank Hart, Robbie Hines, Niel McKeown, David Taylor

Evaluating Factor:	Points Possible	Actual:
Qualifications, Experience and References	30	
Methodology, Approach to Scope of Work, Schedule of Implementation	30	
Price Proposal	40	

	PayTel	NCIC	Legacy	Lattice
Qualifications:	25%	30%	DISQUALIFIED	30%
Methodology:	20%	27%	DISQUALIFIED	30%
Price Proposal:	20%	35%	DISQUALIFIED	38%
<b>TOTAL:</b>	<b>65%</b>	<b>92%</b>	<b>DISQUALIFIED</b>	<b>98%</b>

Committee Members award the Inmate Phone Service Contract to  
Lattice

The date of completion: (45 days or less) **October 20, 2017**





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**THE PUBLIC SERVICE COMMISSION OF**  
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Vs.

Lattice Incorporated,  
Respondent.

**CERTIFICATE OF SERVICE**


This is to certify that I have caused to be served this day the Complaint and Petition for Declaratory Order of Pay Tel Communications, Inc. as follows:

**VIA FIRST-CLASS MAIL SERVICE AND ELECTRONIC MAIL SERVICE**

Jeffrey M. Nelson, Esq.  
South Carolina Office of Regulatory Staff  
1401 Main Street, Suite 900  
Columbia, SC 29201  
[jnelson@regstaff.sc.gov](mailto:jnelson@regstaff.sc.gov)

**VIA FIRST-CLASS MAIL SERVICE**

Lattice Incorporated  
National Registered Agents, Inc.  
2 Office Park Court, Suite 103  
Columbia, SC 29223

  
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November 30, 2017  
Columbia, South Carolina